

THE HIGH COURT OF UTTRANCHAL AT NAINITAL.

Appeal From Order No. 1188 Of 2001

Old F.A.F.O. No. 650 of 1988

Kamar Lal S/O Lakkhooram, 35 years,
R/O Village Behata, Tehsil Kolaras,
District Shivpuri (M.P.)

..... Claimants-**Appellants**

Versus

1. Shiv Kumar Gupta,
16, Darshanigate, Dehradun, (U.P.)
2. M/s Atul Motors through Bhuvesh Kumar,
Darshanigate Dehradun (U.P.)
3. The New India Assurance Company
Through Manager, 25, Rajpura Road, Dehradun (U.P.)

... **Respondents.**

Sri S.C. Bhatt, Advocate, learned counsel for the appellants.

Sri T.A. Khan, learned counsel for the respondent no.3.

Date May 11, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 110-D of the Motor Vehicles Act, 1939 (***for short the Act***) has been preferred against the judgment and order dated 25-4-1988 passed by the Motor Accident Claims Tribunal/District Judge, Chamoli (***in short the Tribunal***) in M.A.C. Petition No. 10 of 1987, Kamar Lal Vs. S.K.Gupta and others, whereby the learned Tribunal dismissed the claim petition on the ground that the deceased mother had no income and the claimant had already received sum of Rs. 13,500/- as ex-gratia compensation made by the Government. Aggrieved, the claimant has come up in appeal before this Court.

Relevant facts giving rise to this appeal are that Smt. Bhuri Bai widow of Lakhu Ram aged 65 years, a cultivator by profession and earning about 500/- per month was returning after Darshan of Shri Badrinath Ji by bus No. HRX-2791 on 31.7.1986 and at about 12 noon, near Hanuman Chatti on Sri Badrinath-Joshimath road a motor accident took place due to negligence of the

driver of the said bus with the result Smt. Bhuri Bai sustained injuries and died at the spot along with others inside the bus. In this accident several other persons sustained injuries and some of them had died. Her son has filed claim petition for compensation of Rs. 25,000/- against the owner of the bus Sri Shiv Kumar Gupta and New India Assurance Company with whom the bus was duly insured.

The owner/driver of the bus in question contested the claim petition and filed written statement asserting therein that Ved Prakash was driving the bus at the relevant time at a moderate speed carefully and cautiously and due to rains, the road was slippery, the bus slipped and skidded towards **Khud** down the road and the accident was inevitable and beyond the control of the driver. The Insurance Company also contested the claim petition by filing its written statement on the ground that one Vijay Kumar was the driver of the vehicle on the ill-fated day and there was no road permit in respect of the said bus and that the liability of the Insurance Company was limited to Rs. 15,000/- only.

The learned Tribunal framed necessary issues in the case. After perusing the evidence on record as well as after hearing both the parties, the learned Tribunal has held that the accident was caused due to rash and negligent driving on the part of the driver resulting in fatal injury to Smt. Bhuri Bai. It was further held that the bus was being driven with valid permit and it was duly insured, hence the Insurance Company was liable to pay compensation. However, the learned Tribunal dismissed the claim petition on the ground that the claimant had already received ex-gratia compensation of Rs. 13,500/- paid by the Government and that the deceased being 65 years of age, there was no income of her own as alleged by the claimant.

It has been contended on behalf of the appellant that the learned Tribunal fell into error in not considering the provisions of the Act and it has been argued that the claim petition has wrongly been dismissed holding that the claimant has already received ex-gratia compensation paid by the Government. It was submitted that the ex-gratia compensation is not adjustable towards compensation under the provisions of the Act.

I have heard learned counsel of the appellants as well as learned counsel for the Insurance Company and have perused the entire material on record.

At the outset, it may be noted that the learned counsel for the Insurance Company has fairly conceded that this Court vide order dated 18-4-2006 has awarded compensation of Rs. 15,000/- along with simple interest @ 9% per annum in A.O. No. 814 of 2001 Raghubir Singh and others Vs. Shiv Kumar Gupta and others, which arose out of the same motor vehicle accident. It has not been disputed that the facts of the said appeal are similar to the facts of the present appeal. In that case deceased Maya Bai was aged 63 years while in the present case deceased Bhuri Bai was aged 65 years.

The record reveals that admittedly the accident in question took place on 31.7.1986. The deceased Smt. Bhuri Bai was aged 65 years at the time of her accidental death. On the point of income of the deceased, the learned Tribunal has observed that Smt. Bhuri Bai was not going to work in the agricultural field being an old lady of 65 years. It is not disputed that in this accident the motor and father both of the claimant had died and in this petition compensation for the death of mother was claimed.

The approach of the learned Tribunal in dismissing the claim petition does not appear to be correct. It is true that the

income of the deceased was not proved by the claimants. It cannot be denied that the claimant suffered mental agony and loss of love and affection for having lost his mother. However, under the provisions of the Motor Vehicles Act, compensation of Rs. 15,000/- has to be paid on account of no fault liability in case of death under the provisions of Section 92-A of the Act. Insurance of the vehicle is not in dispute. In my view, the learned Tribunal should not have dismissed the claim petition outright and for the reason that ex-gratia compensation was paid to the claimant. I find force in the submission of the learned counsel for the claimant-appellant that there is no provision under the Act to adjust ex-gratia compensation, which was paid by the Government and not by the owner or the insurer of the vehicle.

Taking into consideration the facts and circumstances of the case, I am of the view that the compensation of Rs. 15,000/- shall be just and proper in the present case. Accordingly, the claimant-appellant is entitled to get compensation of Rs. **15,000/-** along with simple interest @ 9% per annum from the date of filing of claim petition till the date of payment. Accordingly, the appeal deserves to be partly allowed and the impugned award is liable to be modified to the above extent.

The appeal is partly allowed. The impugned award dated 25.4.1988 is modified to the extent that the claimant-appellant shall be entitled to compensation of Rs. 15,000/- along with interest @ 9% per annum payable by the New India Assurance Company, the insurer of the vehicle from the date of claim petition till payment. No order as to costs.

(B.S. Verma, J.)

R.C.P.